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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 687

STATE OF NEBRASKA, PETITIONER

v.

UNITED STATES OF AMERICA, CLARA H. MCNISH, T. C. SPIKER, AND RUSH C. CLARKE, SPECIAL ADMINISTRATOR OF THE ESTATE OF OLIVE E. JONES, DECEASED

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 66-71) is reported in 70 F. Supp. 610. The opinion of the Circuit Court of Appeals (R. 219-226) is reported in 164 F. 2d 866.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 23, 1947 (R. 227). The petition for a writ of certiorari was filed March 23, 1948. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial

Code as amended by the Act of February 13, 1925, 28 U. S. C. 347(a).

QUESTION PRESENTED

Whether, when the United States condemned public school lands of the State of Nebraska which were under lease, the district court erred in valuing the entire interest taken as a single unit and in then apportioning that award among the parties in interest.

STATEMENT

A condemnation proceeding instituted by the United States included two sections of land owned by the State of Nebraska (R. 1-9). These sections had been granted by the United States to the State "for the support of common schools." Sec. 7, Act of April 19, 1864, 13 Stat. 47, 49. They had been leased by the State and, when condemnation began, the leases had not expired.

On the trial to determine just compensation for these sections, the jury was instructed to determine their market value and the market value of the leases and to return a verdict for the State for the difference (R. 180-185). The jury found that "total just compensation" amounted to $38,400.00, and that of this sum the lessees were entitled to $11,520.00 and the State $26,880.00 (R. 51-52).

The State appealed (R. 72), and the judgment was affirmed (R. 227).

ARGUMENT

The jury fixed the value of the land at $38,400.00, and the State nowhere asserts it was worth more. It is therefore evident that the State has no further claim against the United States. For the Constitution requires only that the United States pay the market value of what it takes. *United States* v. *New River Collieries,* 262 U. S. 341, 343; *Olson* v. *United States,* 292 U. S. 246, 255; *United States* v. *Miller,* 317 U. S. 369, 373-374.

The State complains (p. 5) of the awards to former lessees of part of the market value fixed by the jury. But it also contends (p. 20) that, regardless of the correctness of these awards, the United States must pay the State the full market value of the land. This contention is premised upon the circumstance that before the land was condemned it had been leased. But, as the court below pointed out (R. 222), the leases did not enhance the value of the land. Instead, the result was that this value had to be divided between owners and lessees according to their respective interests. The liability of the United States is not increased by the fact there is a division of ownership. *Silberman* v. *United States,* 131 F. 2d 715 (C. C. A. 1); *Eagle Lake Improvement Co.* v. *United States,* 160 F. 2d 182 (C. C. A. 5), certiorari denied *sub nom. Humble Oil & Refining Co.* v. *United States,* 332 U. S. 762.

In contending otherwise, the State argues (e. g., pp. 3-4, 5, 6, 11, 12-13, 15, 20, 24, 28) that an obligation to pay more than value is imposed upon the United States by the construction put upon the Constitution and statutes of Nebraska by its highest court. In essence, the argument is that these enactments prohibit the State from alienating lands held for school purposes for less than their "full" value, and therefore when the State permits school lands to be condemned it must be paid that value even if, in addition, lessees must be compensated for their interests. It invokes (pp. 4, 15-16, 19, 24) *State* v. *Platte Valley Public Power and Irrigation District,* 147 Neb. 289 (1946).

But the measure of compensation guaranteed by the Federal Constitution is not circumscribed by provisions of state law. See *United States* v. *Miller,* 317 U. S. 369, 380. A State may fix the price for which it will voluntarily part —by delegating the power of eminent domain—with its school lands. But the power of the United States to con-

demn such land is not derived from the State and does not depend upon its will.

CONCLUSION

This case presents no issue of general importance. The decision of the court below is correct, and there is no conflict of decisions. The petition for certiorari should be denied.

Respectfully submitted.

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APRIL 1948.

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